between the ILEC and another carrier, and relates to "equipment necessary for interconnection or access to unbundled network elements... ." Thus, contrary to MFS (at 24) it is reasonable for an ILEC to limit collocation on its premises (as the Sprint LECs have) to bilateral arrangements between itself and the other carrier (as opposed to allowing one collocating carrier to interconnect with another collocating carrier in the ILEC's premises). It is also fair for the ILEC to limit the space that must be provided to any one collocator to the amount necessary to accommodate the equipment needed for the particular type of interconnection that is taking place. Nothing in the Act suggests that the Commission can or should require ILECs to enter the real estate business generally (e.g., to house the entire central office of a CLEC) even if they have substantial unused space. Allowing ILECs to limit the available space only to the amount required for necessary equipment also would help to ensure that space is available for multiple collocators in the future. In addition, it would not be fair to the ILEC to apply the TSLRIC-based pricing standard -- required by statute for necessary equipment -- to space for other discretionary facilities. Sprint does not suggest that the Commission should preclude an ILEC from making more space available than the minimum required by law. But if the ILEC chooses to do so, it should be entitled to charge market-based rents.

c. Unbundled Network Elements

(1) Network Elements

Many parties[15] argue that unbundled network elements cannot be combined to provide the equivalent of a service that is available for resale, and instead that the requesting carrier must provide at least some facilities of its own. There is no explicit support for this interpretation in §251. On the contrary, §251(c)(3) provides, in part:

> An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

The plain import of this language is that the carrier must unbundle sufficient elements to allow requesting carriers to combine them to provide an end-to-end service, and nothing suggests that the requesting carrier must provide any quantum of such elements through its own facilities or equipment.

The crux of the argument to the contrary is that the price for the sum of unbundled network elements under §252(d)(1) would be different than the wholesale price of the retail service under §252(d)(3). However, buying a service at wholesale rates for resale is quite different than purchasing unbundled elements, and it should be priced differently. The

[15] E.g., USTA at 24-26, Ameritech at 27-31, BellSouth at 32-33, MFS at 36-40, and TCG at 39-42.

reseller is simply reselling whatever the retail service is (e.g., local service), without obtaining any of the other revenues generated from the end user's traffic, such as interstate and intrastate access revenues. By contrast, the purchaser of unbundled network elements is buying the right -- and paying cost-based rates for that right -- to provide all of the services for which those elements can be utilized, including access,[16] as well as to provide services that the ILEC does not provide. Even if the CLEC simply uses the elements to provide the services that the ILEC provides, as Sprint argued in its initial comments (at 27-28), having alternative means to "resell" the ILEC's services provides flexibility to new entrants and an important, pro-competitive incentive to rationalize the pricing of communications services.

Sprint also takes issue with the suggestion of NYNEX (at 38) that a purchaser of unbundled elements is not entitled also to resell, at a wholesale rate, service features offered by the ILEC as retail services. If Sprint's parsing of the definition of unbundled network elements is correct (see Sprint's Comments at 24-26), certain service features necessary to permit a CLEC to offer the same range of services

[16] The RBOCs (e.g., Bell Atlantic at 10-14 and Pacific at 78-80) are fundamentally wrong in arguing that ILECs should continue to receive access charges relating to unbundled elements.

as an ILEC -- such as custom calling features -- cannot be properly included within the unbundled switching element, and thus can only be offered to the end user by purchasing and reselling the retail service. Nothing in §251(c) suggests that a carrier purchasing unbundled network elements is foreclosed from also reselling certain services, or vice versa.[17]

(3) Specific Unbundling Proposals

After reviewing comments of other parties, as discussed above, Sprint believes that electronic bonding can be considered a network element and added to the list of minimum required elements.

In its initial comments, Sprint opposed the local switching platform concept (see Comments at 37-39), and Sprint fully supports TCG's comments on this issue at 42-44. Sprint also notes that a Hearing Examiner of the Illinois Commerce Commission recommended adoption of the local switching platform concept in AT&T Communications of Illinois, Inc., et al., 95-0458, et al. (May 16, 1996). However, the recommended decision did not address in any detail the ambiguities posed by the local switching platform concept and thus, in Sprint's view, it is not entitled to any weight by this Commission.

---

[17] Thus, if electronic bonding is deemed to be a network element, then a reseller should certainly be entitled to purchase the electronic bonding features needed to provide seamless service to its customer.

As indicated above (at n.11) and discussed in its comments (at 31-32), Sprint is opposed to a requirement that the loop be unbundled into sub-loop elements at the outset, notwithstanding that other major IXCs advocate such unbundling. Sprint's position is not that such sub-loop unbundling is technically infeasible, but that it raises so many administrative complexities that requiring all ILECs to engage in sub-loop unbundling throughout their systems would impose substantial costs on the ILECs without any opportunity to recover those costs if demand for sub-loop elements does not develop. Leaving sub-loop unbundling to the request process will fully meet the needs of interconnecting carriers that want such elements, without creating the potential for imposing unrecoverable costs on ILECs at a time when they are just beginning to face competition.

MCI takes a broader view of access to databases and signaling than Sprint believes is warranted. For example, it includes (at 32-33) AIN as a database necessary to support call processing applications,[18] and would also require access to one database (customer payment records) that is neither necessary for call processing nor, in Sprint's view, a necessary part of electronic bonding. As Sprint stated in its

[18] However, if an ILEC uses AIN to provide call routing functions such as TFC, then access to AIN for those functions should be unbundled.

comments (at 40), the databases it believes are necessary for call routing and completion, and are required to be unbundled, are the portions of the LIDB database related to call routing and completion, and TFC (800/888).[19] Other database access could be unbundled based upon the receipt of a bona fide request and evaluation of technical feasibility.

With respect to signaling, MCI states (at 36) that two interconnection points are available today: (1) LEC SSP to non-LEC SCP; and (2) non-LEC SSP trigger control at the LEC switch. As we explained in our comments (at 41), connecting another service provider's SCP to the ILEC's signaling network directly (as in (1) above) creates significant network reliability issues for the ILEC.

AT&T claims (at 23) that network elements should be unbundled, so that CLECs can provide call processing instructions to ILEC switches from CLEC (or third party) databases for calls to or from CLEC customers. However, current database services, such as the TFC (800/888) database, do not contemplate multiple database access. Standards for this type of database interconnection, as well as any new type of database interconnection, must be developed in order to protect the reliability of the network.

[19] Sprint defines "database" as a resource for storing data (e.g., credit card validation), and does not include software necessary to develop proprietary services in its definition.

d. Pricing of Interconnection, Collocation and Unbundled Network Elements

(3) Rate Levels

(a) LRIC-based pricing methodology

In its initial comments (at 45-50), Sprint endorsed TSLRIC-based prices for interconnection, collocation facilities and unbundled network elements, including an allowance, to be determined by the states, of up to 15% above the TSLRIC costs for a particular element, to cover shared costs. The RBOCs generally argue that these prices should instead be set to recover historical costs, and USTA even claims that its members are entitled to a profit over and above the cost of capital.[20] These arguments are in clear conflict with §252(d)(1) -- in which Congress took pains to repudiate rate of return, rate-base computations of costs -- and with the policy of fostering sound local competition. TSLRIC clearly should be the foundation for interconnection pricing.[21]

As explained in its comments (at 46), Sprint believes that some allowance for shared costs is necessary to provide sustainable prices for the ILEC and an incentive for

[20] E.g., BellSouth at 51-57, SBC at 88-95, and USTA at 38-43.

[21] See Sprint at 43-45, DOJ at 27-31, AT&T at 46-50, MCI at 61-68, and CompTel at 69-71.

facilities-based competition. Sprint does not view its proposed allowance for shared costs as inherently inconsistent with the views of other major proponents of TSLRIC pricing, notwithstanding that some of those parties appear to advocate no such allowance. The Department of Justice acknowledges (at 31) that TSLRIC rates "will not necessarily contain all of the joint and common costs associated with the entire network." While not endorsing a particular methodology, DOJ (at 32) appears to endorse an appropriate allowance for "forward-looking joint and common costs." Similarly, MCI acknowledges (at 66) that such costs exist, although it believes them to be low. AT&T (at 63-64) argues that the only relevant shared costs are the forward-looking costs of an efficient supplier that are part of the long run incremental cost of producing an entire bundle of network elements, and that the burden should be on the ILEC to demonstrate the existence and magnitude of such costs. Finally, CompTel (at 71-72) appears to predicate its opposition to any add-ons to TSLRIC on the assumption that any such add-ons would reflect "backward looking" or embedded costs.

Sprint agrees that any allowance for shared costs must reflect costs incurred by an efficient local service provider, and hence is forward-looking in nature, and that the burden should be on the individual ILEC to demonstrate the magnitude of these costs. If MCI is correct in believing that these costs are small, then the allowance for such costs should be small. However, that does not mean that there should be no allowance for such costs. And even though Sprint's proposed 15% ceiling on the allowance for such costs was based, in part, on an analysis of embedded overheads, the ceiling was intended to reflect Sprint's belief that the forward-looking overheads for an efficient LEC should be expected to be below those that have been experienced in the past. See Sprint's Comments at 49-50.

With one exception,[22] Sprint agrees with the TSLRIC principles espoused by AT&T at 55-61. However, unlike AT&T and others, Sprint does not endorse the use of the Hatfield study for TSLRIC pricing or any other proxies. First, the version of the Hatfield study submitted in this docket employs nationwide industry average costs. Sprint submits that rates for unbundled network elements should be based on the costs of the carrier offering the element. If the carrier has lower-

[22] At 57-59, AT&T argues that TSLRIC should reflect costs of an efficient, cost-minimizing competitor using the most efficient technology available and optimal network design, sizing and architecture. Although Sprint agrees that TSLRIC should reflect only current and forward-looking technologies, it does not believe that the Commission should allow ILECs to recover only the costs of a hypothetical carrier operating under hypothetical conditions. Rather, each ILEC's network design and average utilization (unless spare capacity is driven by specific services) should be taken as given in computing TSLRIC to afford that ILEC recovery of the forward-looking costs it incurs in providing interconnection as a network element.

than-average costs, the use of industry average costs would unjustly enrich it. Conversely, there is no indication in §252(d) that Congress intended to preclude carriers having above-average costs from recovering those costs. Second, TSLRIC costing should be forward-looking from the ILEC's current network and technology, and not based (as this version of the Hatfield model is) on an idealized network and technology that may have no relationship to the ILEC in question. Finally, the calculation of switching costs in the Hatfield model utilizes in part proprietary software that gives no visibility to the components of this cost. Sprint believes that if the Commission were to adopt a proxy TSLRIC methodology, the model should be open, and should not reflect a "black box" approach. As Sprint explained in its comments in the universal service proceeding, one advantage of a proxy model is that it does not need to be proprietary. Unfortunately, the Hatfield model is being kept proprietary, so it has no obvious advantage over ILEC proprietary models.

e. Interexchange Services, Commercial Mobile Radio Services, and Non-competing Neighboring LECs

(1) Interexchange Services

In its comments (at 67-69), Sprint agreed with the Commission's tentative conclusion that §251(c)(2) obligations relate to interconnection only for the purpose of providing telephone exchange service and exchange access by the carrier requesting interconnection with the ILEC. Although any carrier, including IXCs, may request interconnection pursuant to that provision, it is entitled to such interconnection not as a substitute for the access it now purchases from the ILEC, but only to provide local exchange and access service itself. This is a particularly difficult issue to parse out under the 1996 Act, and Sprint takes considerable comfort from the fact that the Department of Justice (at 41-45) shares Sprint's view that the Commission's tentative conclusion is correct.

MCI (at 79) argues that even under the Commission's tentative interpretation, IXCs would be able to use §251(c)(2) interconnection for access, at the cost-based rates contemplated by §252(d)(1), because toll carriers do provide exchange access service to their long-distance customers. This argument is creative, but nonetheless strained. Section 3(16) of the Act defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of origination or termination of telephone toll services." Such an offering can be made only by the carrier providing the local service. Even though the toll charges assessed by IXCs implicitly reflect the charges for access that IXCs pay to the ILEC at each end, the IXC is only offering toll service, not "exchange access," to the consumer. The IXC does not "offer[] access to telephone exchange services or facilities" and does not offer its presubscribed customers the capability to route a particular long distance call via a different IXC. The consumer's ILEC is the carrier that provides this function.

While Sprint disagrees with other IXCs on whether §251(c)(2) overturns the existing access charge regime, this difference of statutory interpretation should not be construed to reflect a difference in the ultimate objectives of Sprint and other major IXCs. Sprint agrees with other IXCs that network elements can be purchased by an IXC to provide both local and access service for calls to and from the end user, and thus that §251(c)(3) does provide an immediate alternative to today's above-cost access charges in circumstances where the IXC can persuade a consumer to select it as a local carrier as well. Even this limited alternative will, when local competition begins to take root, provide a powerful business incentive for the ILECs to rationalize their pricing. Sprint also fully shares the views of other IXCs that access reform must be an urgent priority at the Commission, and that it must be completed before the RBOCs' in-region entry into the long distance market can seriously be entertained. Sprint's only disagreement with other IXCs is on whether the IXCs will have a comprehensive cost-based substitute for access charges available through §251(c)(2) when Commission rules are issued on August 8. Even CompTel, which disagrees with Sprint's interpretation of §251(c)(2), recognizes (at 81-

85) that it is impossible as a practical matter to price access at TSLRIC immediately, and recommends that TSLRIC-based prices for stand-alone access under §251(c)(2) not be required to take effect until after the Commission's universal service proceeding is completed.

3. Resale Obligations of Incumbent LECs

b. Resale Services and Conditions

Sprint stated in its initial comments (at 71) that "the only permissible restriction on resale is that residential local exchange services may not be resold to business customers." On reflection, Sprint believes that it would be appropriate to extend that cross-class prohibition to other services if they are supported by explicit universal service funding. Lifeline service should be available for resale, but only to Lifeline-eligible customers. Similarly, any special discounted service afforded to non-profit medical facilities, libraries and schools under the universal service provisions of the Act should be available for resale only to such eligible institutions.

Pacific (at 89-90) and U S West (at 64-65) appear to oppose any wholesale discounts on services priced below costs. However, requiring them to offer a wholesale discount based on avoided costs leaves them no worse off if the customer is served by a reseller than if the customer is served by the

ILEC directly. Furthermore, except for services supported by explicit universal service funding, no retail service should be priced below cost. Effective competition would not permit the kinds of pricing strategies that have been employed in the past, with implicit support flows from one service to another. The Commission should acknowledge this fact by a prompt reform of access charges, and also should urge the state commissions to do so as well through access reform and rebalancing of retail service rates. In the meantime, so long as the wholesale discount is fairly calculated, there is nothing unfair about requiring ILECs to make any of their services available for resale, even they are "priced below cost," and subject to the limited cross-class prohibitions discussed above.

Many of the RBOCs propose a host of other restrictions on resale that they would have the Commission endorse as reasonable, including the exemption of optional rate plans, promotions, "grandfathered" services, and services provided under single-customer contracts.[23] The sum and substance of these restrictions is the desire to be able to so restrict the resale obligation that it could not offer a meaningful opportunity for new entry. The Commission, in two decades of

[23] See e.g., Ameritech at 54-58, BellSouth at 66, SBC at 72-73, U S West at 64-69, and USTA at 71-73.

administering a resale policy in the interexchange industry -- a policy applicable to dominant and non-dominant carriers alike -- has never countenanced restrictions of this sort, and there is no reason for it to do so now.

c. Pricing of Wholesale Services

(2) Discussion

Attached to Sprint's initial comments as Appendix D was an avoided cost study that a Sprint LEC had performed for purposes of a Tennessee PSC proceeding. It included detailed analysis, by sub-account, of whether particular items of expense are avoided in providing services on a wholesale basis.

By contrast, AT&T (at 83-84) and MCI (at 90-93 and Attachment 2) employ far too broad a brush in determining the avoided costs of offering retail services on a wholesale basis. For example, AT&T would consider all uncollectibles, marketing, customer service and billing expenses as "avoided" for wholesale purposes. Treating all such expenses as avoided is clearly unwarranted. Carriers can and do experience uncollectibles when selling their services to other carriers. In fact, Sprint's Long Distance Division's 1994 uncollectibles for services provided to resellers totaled 2.43% of reseller revenue, nearly five times the uncollectible revenue experienced by Sprint's Tier 1 LECs (.49% of total revenue) in that year. Marketing and customer service expenses include such functions as initial product development which perforce apply to both the wholesale and retail provision of each service. Marketing and customer service expenses also include expenses associated with interexchange services, which will not be affected by the wholesale offering of local end-user services. Billing expenses include many recording functions that must be performed for the reseller, and that should be included in the costs of providing the wholesale service. Furthermore, some legitimate selling and advertising expenses will be incurred in providing wholesale services in a competitive environment.[24]

AT&T erroneously claims that portions of network support, operator systems, testing, plant operations, call completion services and number services also constitute avoided costs. The network support, testing, and plant operations expenses are all network-related and will continue to be incurred regardless of whether a service is offered at wholesale or retail. Operator systems, call completion services and number services are stand-alone services that are not built into the prices for local service (except for whatever directory

---

[24] MCI (Attachment 2 at 7) claims that external relations expenses are avoided because they relate to regulatory costs, which will be negligible in the context of providing wholesale services. It is ironic that MCI is making that argument in a proceeding that, in part, addresses the provision of services on a wholesale basis.

assistance calls are allowed free of extra charge), and thus these costs are irrelevant to the computation of the discount.

AT&T would also exclude a portion of shared, common, and overhead expenses, including portions of general support, depreciation, income and other taxes, return, executive and planning, and general and administrative expenses. General support expenses (which include motor vehicles, land and buildings, furniture, office equipment, and general purpose computers) are common in nature and are used to support all the products and services offered by a company. These network support costs will still be incurred in a wholesale environment and will not be avoided if local services are sold to wholesalers instead of directly to retail subscribers. It is also unreasonable to include a portion of depreciation as an avoided cost. The ILEC will continue to provide the same physical facilities (switching, cable and wire, and circuit equipment) to which depreciation relates, regardless of whether a particular end-user is served directly by the ILEC or indirectly through a reseller. Thus, there should be no material effect on depreciation from making retail services available for resale. For the same reason, return and taxes are not avoided either. Finally, executive and planning, and general and administrative expenses are corporate overheads that cannot be directly attributable to any individual product or service, and AT&T has provided no reasoned basis for concluding that any of these costs would be avoided as a result of making retail services available for resale.

In short, the approach AT&T and MCI take to the calculation of avoided costs substantially exaggerates the wholesale discounts that should be made available. Sprint's methodology, that examines the relevant cost categories by sub-account, is far more precise.

AT&T (at 83-84) also argues that Congress clearly contemplated that a wholesale discount based on avoided costs would be sufficient to permit viable competition with ILECs through resale, and that a discount that does not permit viable competition should be presumed not to comply with §§251(c)(4) and 252(d)(3). Sprint disagrees in both respects. First, nothing in the pricing standard in §252(d)(3) even suggests that avoided costs should be computed in such a fashion as to guarantee the economic viability of resale. Indeed, Congress considered, but rejected, an economic viability test. Moreover, AT&T's gloss on the avoided-cost standard would also be impossible to implement. There is no way of ascertaining in advance whether a particular discount is great enough to permit "viable" competition. That depends on the reseller's efficiency, its internal cost structure, and on the amount it is willing to spend on marketing in order to penetrate the market.

As can be seen from the foregoing discussion of the computation of the discount, Sprint believes that the avoided-cost standard, properly applied, will result in a much smaller discount than those championed by other IXCs. However, to attempt to jury-rig the calculation of avoided costs, in order to reach some preconceived notion as to how large a discount is needed for viable resale competition, is contrary both to the 1996 Act and to sound policy. The 1996 Act opened as many doors to local competition as possible: allowing everything from pure facilities-based competition, at the one extreme, to pure resale, on the other. However, nothing in the Act guarantees the viability of any particular business strategy any individual competitor, or even of local competition itself. As a matter of economics, Sprint believes that ultimately the only threat to the ILECs' bottleneck is facilities-based competition. Because of the time and capital required to enter the market in this fashion, even facilities-based carriers will need to rely on the use of unbundled network elements and the resale option possibly for decades to come. But if CLECs attempt to rely solely on the purchase of unbundled network elements from ILECs or pure resale of ILEC services, competition will never be effective. A wholesale discount set at an artificially low level, in order to assure that pure resale competition is "viable," can only penalize carriers that commit themselves to facilities-based entry into the local market, and thus will ultimately disserve the ultimate goal of local competition.

Sprint also disagrees with AT&T's claim (at 85-86) that the states are not precluded from prescribing wholesale discounts that exceed the "avoided costs" standard. Section 261(c), on which AT&T relies, authorizes the states to take actions to "further competition" so long as those actions "are not inconsistent with this part... ." The pricing standard in §252(d)(3) is a mandatory and specific one, not a minimum one that the states are free to exceed: it provides that the states "shall determine" (not "may determine") wholesale rates on the basis of retail rates less costs that will be avoided. Had Congress intended to allow the states to exceed this discount, it could easily have done so (e.g., by directing states to set wholesale rates at a level "no greater than" retail rates less avoided costs).

CompTel (at 98-99) claims that long distance resellers receive discounts that are 50-80 percent below retail long distance rates and suggests that such discount levels should be used as a benchmark against which to judge the level of the wholesale discounts offered by ILECs. CompTel does not explain the derivation of its 50-80% estimate of long distance wholesale discounts, or to what "retail" rates it related those discounts. However, the current long distance rate structure is far more differentiated than the rates for local exchange service. Unlike the local market, the IXCs charge far lower rates to high-volume retail customers (who may employ dedicated access instead of the more expensive switched access to originate or terminate their calls) than to occasional users. Sprint doubts that, as a general rule, prices offered by facilities-based IXCs to resellers represent significant discounts off the "retail" rates available to high-volume customers. In addition, access charges paid to originate and terminate calls comprise nearly half of a long distance carrier's costs and must be reflected in the "retail" rates that IXCs charge their lower-volume end user customers that are served via switched access. By contrast, many resellers provide their own access, and thus the IXCs' rates to these resellers for mere long-haul transmission would naturally reflect deep discounts from retail rates that include an average level of access charges. Thus, if CompTel based its discount calculations on the difference between a rate charged to a high-volume reseller, exclusive of access, on the one hand, and the rate charged to a typical residential user, on the other hand, the comparison is an entirely specious one, and has no relevance in any event, to the level of avoided costs for resale of local services.

(3) Relationship to Other Pricing Standards

In its comments (at 72-74), Sprint argued that the Commission should employ an imputation rule to guard against price squeezes by ILECs. Sprint acknowledged that many states may have pursued below-cost rates for residential service in the past, and that a period of adjustment may be needed to allow the rate rebalancing necessary to give ILECs a fair opportunity to comply with the imputation rule, but argued that until the ILECs meet the imputation test, their provision of unbundled network elements should not be deemed to comply with §251.

A number of RBOCs oppose an imputation test. BellSouth, for example, argues (at 68-69) that since local retail rates are determined by state regulatory commissions and may be based on factors other than costs, an imputation test for unbundled network elements would simply be unfair. Sprint believes there are serious questions whether rates for any service can be imposed at a below-cost level once explicit universal service subsidy mechanisms are adopted, and thus believes that BellSouth's concern may well be a short-term, transitional problem for the ILECs. However, unless this Commission does impose an imputation test, the ILECs will have little incentive to vigorously pursue rate rebalancing activities before their state commissions. Rather, they will have an incentive to preserve, as long as they can, below-cost retail rates (to ward off potential competition) and above-cost intrastate access charges (to finance the below-cost retail rates and at the same time inflate their competitors' costs). Requiring them to pass the imputation test in order to comply with §251 is necessary both as a transitional incentive for prompt rate rebalancing and as a permanent check against price squeezes.

C. Obligations Imposed on "Local Exchange Carriers" by Section 251(b)

5. Reciprocal Compensation for Transport and Termination of Traffic

f. Bill and Keep Arrangements

Sprint advocates the use of bill and keep for termination of traffic between local exchange carriers for an interim period not to exceed two years,[25] although the carriers could agree to replace bill and keep with a different reciprocal compensation method prior to the end of the two year period, and could also agree to extend bill and keep beyond two years. In its comments (at 87-88), Sprint anticipated and addressed the RBOCs' argument that it is impermissible for the Commission to prescribe bill and keep, even for this limited interim period. Sprint will not repeat its argument here but

---

[25] Transport to the end offices and tandem switching would be priced at TSLRIC without (for the reasons explained at 78-81) an additional allowance for shared costs.

will respond briefly to the RBOCs' claims[26] that bill and keep is unconstitutionally confiscatory.

The notion that bill and keep is a forced taking of ILEC property overlooks the fundamental fact that ILECs, like CLECs, receive substantial value from bill and keep arrangements. While they receive no "hard currency" from the CLEC, they are likewise relieved of the obligation to pay "hard currency" to the CLEC for traffic that terminates on the CLEC's network. Moreover, the ability of their subscribers to place calls to subscribers of other LECs enhances the value of their network. In addition, the RBOCs have not shown (as they must) that they would be deprived of a reasonable opportunity to earn a fair overall return. The only additional costs ILECs incur in terminating local interconnected traffic are the traffic-sensitive costs of local switching. During the limited period envisioned by Sprint for mandatory bill and keep, there is no reason to believe that any such costs not already recovered from their local service rates and other sources of revenues, would be material. The fact that bill and keep is so commonly used today in ILEC-to-ILEC interconnections is perhaps the best indication that such arrangements are not economically burdensome. Under these

[26] E.g., USTA at 84.

circumstances, any claim of "confiscation" cannot be seriously entertained.[27]

III. PROVISIONS OF §252

A. Arbitration Process

While Sprint did not address arbitration issues in its initial comments, it would like to weigh in briefly on the question of whether "final offer" arbitration is desirable in the context of interconnection agreements under §252 of the Act (NPRM ¶268). Sprint believes that final offer arbitration is most useful in circumstances where there is a single, narrowly defined "money" issue on the table. Sprint suspects that the issues to be arbitrated under §252 will be numerous and complex, involving differences of opinion that relate to both technical and economic issues. Under these circumstances, confronting the arbitrator with an "either/or" choice leaves insufficient flexibility to achieve a result that most closely comports with §251 of the Act, particularly when the arbitrator believes that the "right" result lies somewhere between the two parties' positions on various issues. Final offer arbitration also forces the arbitrator to weigh the relative value to the parties of various points of

[27] Cf. People of State of Cal. v. FCC, 75 F.3d 1350, 1363-65 (9th Cir. 1996) (upholding a requirement that IXCs pass calling party numbers to LECs without charge).